



PROTECTING THE VOTE FOR ALL AMERICANS

Governor Mike DeWine
77 S High St.
Columbus, OH 43215
Submitted via email

December 15, 2022

Re: Requested Veto of HB 458

Dear Governor DeWine:

Fair Elections Center¹ writes to express its strong opposition to HB 458 and respectfully requests that you veto this bill. If enacted, HB 458 will make it harder for Ohioans to vote, and almost certainly lead to expensive, protracted litigation paid for by Ohio taxpayers.

As an initial matter, the legislature considered HB 458 and other election-related legislation with far too much haste, leaving voters very little time to make their voices heard. Indeed, HB 458's sponsor introduced a substitute amendment mere hours before its final vote in the Senate Local Government and Elections Committee, without the opportunity for public input. **These types of irregularities will bolster federal constitutional claims brought against this legislation, if enacted.** *See, e.g., Abbott v. Perez*, 138 S. Ct. 2305, 2346 (2018) (“[I]n determining whether racially discriminatory intent existed, this Court considers circumstantial and direct evidence of: (1) the discriminatory impact of the official action, (2) the historical background, (3) the specific sequence of events leading up to the challenged decision, (4) departures from procedures or substance, and (5) the legislative or administrative history, including any contemporary statements of the lawmakers.” (citation and quotation marks omitted)).

In addition to this deficiency, this legislation does not address any pressing issue facing Ohio voters or election officials and would increase voting barriers. HB 458 would:

- **Establish the strictest voter ID law in the country**, by requiring voters to possess an unexpired Ohio-issued driver's license or ID card, U.S. passport, military ID, Ohio National Guard ID, or Veterans' Affairs ID card to vote. Although adults would be able to obtain a free ID from the

¹ Fair Elections Center is a national nonpartisan, nonprofit voting rights organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration. Since 2012, Fair Elections Center has operated Campus Vote Project to help students understand and exercise their freedom to vote, including in Ohio.

Bureau of Motor Vehicles, taxpayers would ultimately bear these costs. Moreover, so-called “free” IDs are not free, as the underlying documentation needed to obtain them can cost more than \$100.²

- Seniors and people with disabilities—who make up 22 percent³ and one-quarter⁴ of Ohio adults, respectively—are at heightened risk of disenfranchisement because they are less likely to possess unexpired photo ID⁵ and often lack reliable access to transportation.⁶
 - Black and Latino Americans are also much less likely to possess driver’s licenses than white voters and more likely to experience barriers to obtaining such ID.⁷
 - Furthermore, most Americans do not have a U.S. passport,⁸ an unsurprising statistic given that a passport currently costs \$130 to obtain⁹ and requires multiple underlying documents many citizens do not possess.¹⁰
- **Waste tens of millions of taxpayer dollars that could be invested in improving election administration.** Five states have spent at least \$36 million to implement and defend voter ID laws, with one of them, Indiana, spending \$30.5 million between 2006 and 2020.¹¹ Voters’ hard-earned money should be used in a manner that serves their needs, not to add needless impediments to the ballot box.
 - **Remove voters’ ability to vote absentee in person using the last four digits of their Social Security Number.** Secretary LaRose has vouched for the security of Ohio’s elections. There is therefore no reason to remove this option for voters who may have difficulty obtaining other forms of voter ID.
 - **Force some voters with disabilities to sacrifice their right to vote privately and independently.** Federal law guarantees voters with disabilities the right to cast their ballot privately and independently. 52 U.S.C. § 21081(a)(3)(A). As discussed above, people with disabilities are less likely to have government-issued photo ID¹² and HB 458 would force many of them to vote absentee by mail, as it would remain the only option for Ohioans to vote using the last four digits of their Social Security Number. Because Ohio law does not currently allow voters

² Richard Sobel, *The High Cost of ‘Free’ Photo Voter Identification Cards*, CHARLES HAMILTON HOUSTON INST. FOR RACE & JUSTICE 2 (June 2014), available at <http://charleshamiltonhouston.org/wp-content/uploads/2015/01/FullReportVoterIDJune2014.pdf>.

³ Table S0101, “Age and Sex,” U.S. CENSUS BUREAU, available at <https://data.census.gov/table?q=S0101&g=0400000US39&tid=ACSST5Y2021.S0101&moe=false> (last visited Dec. 8, 2022).

⁴ *Disability & Health U.S. State Profile Data for Ohio (Adults 18+ years of age)*, CENTERS FOR DISEASE CONTROL & PREVENTION (May 18, 2022), <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/ohio.html>.

⁵ See, e.g., *Barriers to Voting for Older Americans*, U.S. SENATE SPECIAL COMM. ON AGING AND U.S. SENATE COMM. ON RULES & ADMIN. 4 (2017), available at <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>.

⁶ Lisa Schur et al., *Disability and Voting Accessibility in the 2020 Elections: Final Report on Survey Results*, RUTGERS UNIV. 14 (Feb. 16, 2021), available at https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf.

⁷ *The Id Divide: How Barriers To ID Impact Different Communities and Affect Us All*, MOVEMENT ADVANCEMENT PROJECT 1, 8 (Nov. 2022), available at <https://www.mapresearch.org/file/MAP-Identity-Documents-report-2022.pdf>.

⁸ *Consular Affairs by the Numbers*, U.S. DEP’T OF STATE (Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>.

⁹ *Passport Fees*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/passports/how-apply/fees.html> (last updated Dec. 9, 2022).

¹⁰ See *The Id Divide: How Barriers To ID Impact Different Communities and Affect Us All*, MOVEMENT ADVANCEMENT PROJECT 4 (Nov. 2022), available at <https://www.mapresearch.org/file/MAP-Identity-Documents-report-2022.pdf>.

¹¹ Spenser Mestel, *Revealed: US spends millions of taxpayer dollars on ineffective voting restrictions*, THE GUARDIAN (July 22, 2020), <https://www.theguardian.com/us-news/2020/jul/22/voter-identification-laws-cost-taxpayers-36m>.

¹² *Voting Rights and Access to the Vote for People with Disabilities: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin.*, 116th Cong. 4 (statement of Michelle Bishop, National Disability Rights Network), available at <https://www.ndrn.org/wp-content/uploads/2019/10/10.17.19-Voting-Rights-and-Election-Administration-in-America-Michelle-Bishop-NDRN-Written-Testimony.pdf>.

with disabilities to receive their ballot electronically and mark it on their computer, as many other states do, voters with disabilities who rely on computer-based reading technology will be forced to seek assistance in marking their ballot and give up their federally-guaranteed right to privacy and independence.

- **Eliminate the option for provisional voters without acceptable ID to supply the last four digits of their Social Security Number and have their ballot counted.** Under current law, Election Day voters without voter ID can cast a provisional ballot, which will count if they provide election officials with the last four digits of their Social Security Number. *See* Ohio Rev. Stat. 3505.181(B)(7)(a)(ii). HB 458 would eliminate this option, while those with a religious objection to being photographed would have the option to sign an affirmation. Notably, similar voter ID rules enacted in other states have led to multiple lawsuits; for example, Texas was effectively required to adopt a reasonable impediment exception to its voter ID law in 2017 following several years of litigation.¹³
- **Shorten the deadline for receiving completed absentee ballots by mail.** The bill shortens the current 11-day grace period for receipt of absentee ballots returned by mail to four days. This change means that many voters will be disenfranchised due to mail delivery delays, through no fault of their own. This provision would especially hurt military voters located overseas, while doing nothing to enhance election security.
- **Undermine the usefulness of drop boxes,** by limiting each county to just one drop box, which must be located on a board of elections office’s property and would only be open to receive ballots during business hours. These restrictions will be especially problematic for voters in more populous or geographically expansive counties, voters who work during traditional business hours, and voters with disabilities, for whom transportation remains a major voting barrier (see above). Drop boxes are an important access point for voters casting mail ballots and are particularly important in light of shorter deadlines to deliver mail ballots (see above).
- **Perpetuate and double down on an existing Voting Rights Act violation.** Section 208 of the Voting Rights Act provides: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. This rule applies to each stage of the voting process, regardless of how a covered voter casts a ballot. *See id.* § 10310(c)(1). However, under Ohio Rev. Stat. § 3509.05, covered voters may only choose a relative to assist them in returning their mail ballot. *See* Ohio Rev. Stat. § 3509.05(A). HB 458 exacerbates this existing violation by adding criminal penalties.

These are just some of the many ways HB 458 will make it harder to vote. If past is prologue, its enactment will result in extensive litigation, the costs of which would ultimately, unfairly fall on Ohio taxpayers—the very voters affected by these changes. **For these reasons, Fair Elections Center respectfully urges you to veto HB 458.**

Thank you for your consideration. Fair Elections Center can be reached for additional questions or information through its Counsel, Cecilia Aguilera, at caguilera@fairelectionscenter.org.

Sincerely,

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¹³ *Veasey v. Abbott*, 888 F.3d 792, 796–97 (5th Cir. 2018).